# IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 621 OF 2006

SMT. MAYA RAMA YADAV ....Petitioner

Versus

MRS. KAREN NORONHA AND 2 ORS. ....Respondents

Mr. V. R. Tamba, Advocate for the Petitioner.

Shri J.P. Mulgaonkar For R1 & 2

Coram:- S.K. SHAH, J.

Date:- 22nd February, 2007

P.C.:

Heard Counsel on both sides.

2. By this Writ Petition, three Orders passed by the trial Court, one dated 12.09.06 and the other two orders dated 7.12.06 are challenged. The petitioner is the plaintiff who has filed a Suit for declaration of easementary rights and permanent injunction. Earlier to the Order dated 12.09.06 the petitioner was granted adjournments on three occasions and on the last occasion it was made clear that if the plaintiff would not proceed to lead her evidence, that her evidence shall be closed. The matter was then adjourned to 12.09.06. On 12.09.06 the plaintiff's Advocate filed an application for adjournment which was opposed by the defendant's advocate. The impugned Orders are passed followed by the trial Court rejecting the application and closed the evidence on the side of the plaintiff and adjourned the matter to 26.10.06 for leading the evidence of the next witness and this order was not challenged. Thereafter the petitioner filed an application under Section 151 of C.P.C. for setting aside the Order dated 12.09.06 in respect of the closing of evidence of the plaintiff and that application was filed on 16.11.06. That application

again came to be rejected. On the same day the petitioner again filed an application seeking permission of this Court to allow the plaintiff to step into the witness box and lead evidence. That application also was rejected. Consequently, the present Writ Petition is filed.

3. What appears from the submissions made on behalf of the petitioner is that the plaintiff was suffering from a serious disease and therefore she often required to go to Pune for the purpose of treatment and several investigations as directed by the Doctors and therefore the petitioner could not remain present before the Court on the appointed days for recording of evidence.

4. In support of his contention, some medical papers have been produced along with the bus ticket indicating that on 23.06.06 the plaintiff had travelled to Pune by bus. There is also a certificate dated 28.09.06 of Dr. S. Gore which indicates that the petitioner was under his treatment from 8th September to 28th September and was advised strict bed rest and a Pathological Laboratory report dated 13.09.06. These are the documents which are produced in support that the petitioner was suffering from a serious illness of Glucoma of the eyes. No medical certificate has however been produced in support thereof.

5. The learned counsel for the respondents seriously challenges the reasons for seeking adjournments on various grounds.

6. It is a matter of fact that no medical evidence has been produced to indicate that the petitioner was suffering from the said disease and that it was because of the said disease she was prevented from appearing before the Court on the appointed dates. However, the petitioner is the plaintiff and she should be given an opportunity to lead evidence in the interest of justice. In such situation imposing costs would meet the ends of justice.

7. As such, the Writ Petition is allowed subject to payment of costs of Rs.5000/- to the respondents. The costs be paid to the respondents by

depositing in Court, within a period of two weeks from today. The parties shall appear before the trial Court on 15th March, 2007 at 10.00 a.m. In that eventuality the plaintiff should be permitted to continue to lead her evidence. The impugned Orders passed by the trial Court are set aside.

S.K. SHAH, J.

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